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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

RICHARD DeROSA, Plaintiff and Appellant, v. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Respondent, NORTH COAST COURIERS INC., Real Party in Interest and Respondent.	F044247 (Super. Ct. No. 330875) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Stanislaus County. Hurl Johnson, Judge.

Law Offices of Ricardo J. DeRosa, and Ricardo J. DeRosa in pro. per., for Plaintiff and Appellant.

Bill Lockyer, Attorney General, James M. Humes, Assistant Attorney General, Frank S. Furtek and Theodore Garelis, Deputy Attorneys General, Defendant and Respondent.

No appearance by Real Party in Interest and Respondent.

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Appellant Ricardo DeRosa sought a writ of administrative mandamus directing the California Unemployment Insurance Appeals Board (the Board) to set aside its decision denying him unemployment benefits. His claim was previously denied by the Employment Development Department (EDD) on the ground that he left his work voluntarily without good cause within the meaning of Unemployment Insurance Code section 1256. His claim was again denied by the administrative law judge (ALJ), the Board, and finally the trial court. Appellant contends he left his work with good cause because his employer, North Coast Couriers, Inc. (NCC), failed to fully reimburse him for his business expenses and, as a result, failed to pay him minimum wage. We will reverse and remand.

FACTUAL AND PROCEDURAL SUMMARY

In August 2000, appellant began working for NCC as a driver. When appellant was hired, the branch manager told him he would be required to supply his own personal vehicle and liability insurance. He would drive a particular route encompassing about 200 miles per day, which he could complete in about six hours.

Over the course of a year and eight months, appellant drove the same route every day and his weekly travel amounted to about 1,000 miles. The branch manager described appellant as "an excellent, excellent employee. He ... was there every day on time, he did his job, he knew his route, he knew everything. … [H]e was an exemplary employee."

Originally, appellant's compensation was the minimum wage of $6 per hour plus $4 per hour for expenses. At the beginning of 2001, his compensation was changed to the minimum wage of $6.75 per hour plus 19 cents per mile for expenses. The change increased appellant's pay by about $120 per week because his route was extensive. Although he had earlier been on the brink of quitting because of his work expenses, the increase convinced him to stay longer. However, appellant's income still did not cover his work expenses and he complained to the branch manager that his income was inadequate. His family could never depend on his income because expenses for car

maintenance, repair, and replacement would unexpectedly consume it. His cars would need new tires, repairs, and tune-ups. He replaced two cars in the year and eight months he worked for NCC. The cars deteriorated quickly and were ultimately destroyed by the many miles his route required. His third and current car had a monthly payment of $425, with four more years of payments, and he had already driven it 70,000 miles. If the car were to break down, appellant would still owe payments on it.

Appellant and his wife were constantly struggling with this ongoing financial problem and they had been arguing about it for six or eight months before appellant finally quit his job. On Friday, April 26, 2002, appellant came home from work and told his wife his car was making a strange noise and he needed to take it in for a tune-up. They began to argue again. She was frustrated that his income was not available for the household but was again going back into his car. She was very angry and their fight escalated. She said that his income belonged to the family and, if she could not count on the money, his job was not working out.

That night, appellant decided to quit his job because NCC was not adequately compensating him for his work expenses. He was no longer willing to use his personal vehicle for the job because of the expenses involved. If NCC had provided a vehicle, he would have been satisfied with his job. But it was NCC's policy not to provide vehicles for its drivers and all the drivers knew that they were useless to NCC without their personal vehicles. Moreover, appellant would have been satisfied with the job had NCC paid him the Internal Revenue Service (IRS) reimbursement rate of 34 cents per mile to cover his expenses. If it had done so, appellant would have earned $600 more per month, enough to cover his work expenses such that his income could go to his family expenses. This was the essence of his dispute. He believed payment of the 34-cent rate was fair and required by NCC.

NCC's branch manager testified that NCC did not provide vehicles for its drivers nor did it provide loaner vehicles or make any other similar arrangements to assist its

drivers. Drivers were also responsible for their own liability insurance. She agreed that a driver was useless to NCC unless he provided his or her own car. She explained that the company, not the branch office, set the wage and 19-cent reimbursement rate. She said: "[T]he way the company looks at it, when you start to work for the company, you get minimum wage, which [appellant] got, and most all drivers get. You get minimum wage. You already have a car. And they figure the [19 cents] a mile will compensate you for your repairs, and gas and all that as you go through. [¶] Now at the end of the year, when you claim your Federal tax, … you can list your mileage and then show that you made the [19 cents] a mile, but then you can claim against it the [34 cents] a mile. So, you have a, … you know, a tax break on that end."

After the fight with his wife, appellant left the house and drove to New Jersey. He was trying to give his marriage, which he considered at great risk, some breathing room. He was going to see his parents and he hoped to ask them for money in person. He had no intention of moving permanently to New Jersey, although he realized he might need to stay if his wife refused to take him back. On Sunday, April 28, 2002, appellant called the branch manager to inform her that he no longer had a vehicle to perform his job. She told him that if he did not get a vehicle in one week, he would lose his job. The branch manager, however, testified that she did not remember speaking to appellant on Sunday night. She believed appellant spoke to another employee and asked that his check be sent to New Jersey and requested that he be considered for reemployment if he came back. Appellant called his wife everyday attempting to reconcile with her. On May 6, 2002, while still in New Jersey, he filed an out-of-state claim for unemployment benefits to get the process started. On about May 9, 2002, he and his wife reconciled and he returned home on May 13.[1]

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[1] The facts up to this point are taken from the hearing before the ALJ.

On May 7, 2002, the EDD sent NCC a notice of appellant's claim for unemployment benefits, stating appellant's reason for separation: "Quit as couldn't afford to maintain the vehicle mileage and wear & tear of car[.]" (Unnecessary capitalization omitted.) Pursuant to Unemployment Insurance Code section 1357, NCC returned the notice with the following information regarding appellant's statement: "When he was hired, was told: In order to be a [NCC] employee and a driver, had to use his own vehicle. (See veh. registration attached) Moved to New Jersey[.]"

On May 20, 2002, the EDD interviewed appellant. He stated his job required him to drive 1,000 miles per week and he could not afford to pay the expenses on his car. He drove to New Jersey, but returned because he could not find a job. The interviewer concluded appellant quit his job without good cause, stating: "[Appellant] voluntarily quit his job to move to New Jersey. [Appellant] did not take any steps to preserve his employment. The [EDD] feels [appellant's] statement of quitting his job due to expenses of maintaining the car is not credible as his actions do not support it." On May 21, 2002, the EDD sent appellant its determination that he was not eligible to receive benefits. The determination stated:

> "You quit your last employment with [NCC] because you believed the transportation costs were too high in relation to your wages. After considering available information, the Department finds that you do not meet the legal requirements for payment of benefits. [Unemployment Insurance Code] Section 1256 provides -- an individual is disqualified if the Department finds he voluntarily quit his most recent work without good cause or was discharged for misconduct from his most recent work."

On May 24, 2002, appellant appealed the EDD's decision. On the appeal form, appellant stated that he disagreed with the EDD's decision because NCC did not provide a vehicle and each employee was required to provide a vehicle, maintain it, and pay the expenses of its operation. He stated that he no longer had a vehicle for NCC's use and he could not afford the expenses incurred by driving 1,000 miles per week at the rate paid by NCC. He did not have the money to pay for car maintenance and repair. He also stated

that he believed it was unfair and illogical for an employer to require a minimum wage employee to pay the company's operating expenses.

On July 5, 2002, a hearing was held before the ALJ. The ALJ affirmed the EDD's ruling, as follows:

> "STATEMENT OF FACTS [¶] … [¶]
>
> "When [appellant] arrived home the night of April 26, 2002, he and his wife got into a serious dispute because [appellant] wanted to use his paycheck to repair his car. He then left to drive to New Jersey. He has relatives there and wanted to borrow some money. Also, he wanted to put some distance between he and his wife. On Sunday, April 28, from the Midwest, [appellant] called the employer and stated that he as going to New Jersey and asked that his paycheck be mailed there.
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> "[Appellant] testified he was dissatisfied with his wages. He was paid $6.75 per hour and 19 cents per mile for mileage. He drove about 1,000 miles per week. He worked six hours per day. Originally, he had been paid $10 per hour, which covered his wage and mileage, but the employer changed it to this last arrangement, and [appellant] testified that this increased his income because of his long route. [Appellant] returned to Modesto May 13, after he had reconciled with his wife over the phone. He testified he thought that his presence was needed in New Jersey to persuade his mother and father to loan him money. He did not have any prospect of work when his job ended and has not been employed since.
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> "REASONS FOR DECISION [¶] … [¶]
>
> "There is good cause for voluntarily leaving work where the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Precedent Decision P-B-27.)
>
> "Where an employee accepts work knowing the conditions of employment, a subsequent dissatisfaction with those conditions, standing alone, will not support a finding of good cause to leave work. (*Hildebrand v. Unemployment Ins. Appeals Bd.* (1977) 19 Cal.3d 765.)
>
> "Here, the facts and rationale are similar to the case immediately cited above. [Appellant] knew at the time of hire how long his route was and what his rate of pay was. Even then, he received an increase in his total income while there. He was putting much mileage on his car, but knew this

was going to occur when he agreed to the contract of hire. It appears the primary reason why he left was because he had a domestic dispute and wanted to have some breathing room away from his wife. It is not credible that [appellant] had to drive all the way to New Jersey to ask his mother and father to loan him money. Therefore, it is held he left work without good cause, within the meaning of the above-cited statutes.

"DECISION

"The determination and ruling of the [EDD] are affirmed. Benefits are denied. The employer's reserve account is relieved of benefit charges."

Appellant appealed the ALJ's decision to the Board and, on August 29, 2002, the Board issued its decision affirming the ALJ's decision. The Board stated:

"[Appellant] appealed from the decision of the [ALJ] which held that [appellant] was disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of benefit charges.

"We have carefully and independently reviewed the record in this case, and have considered the contentions raised on appeal. We find no material errors in the statement of facts. The reasons for decision properly apply the law to the facts. Therefore, we adopt the statement of facts and reasons for decision as our own.

"As the findings of the [ALJ] are not contrary to the weight of the evidence in the record, we will not disturb them on appeal. (Precedent Decisions P-B-10 and P-T-13.)

"The decision of the [ALJ] is affirmed. Benefits are denied as provided in the appealed decision and the employer's account is relieved of charges."

On October 18, 2002, appellant wrote a letter to the California Division of Labor Standards Enforcement (DLSE), inquiring whether NCC had violated section 2802 of the Labor Code -- which requires employers to reimburse employees for necessary work expenses[2] -- by requiring employees to drive their personal vehicles and reimbursing

[2] All further statutory references are to the Labor Code unless otherwise noted.

them only 19 cents per mile rather than the IRS rate of 34 cents per mile, and whether the potential tax benefit (due to the difference between the IRS mileage rate and the lesser NCC rate) would satisfy section 2802. In an opinion letter, the Labor Commission's attorney, Thomas Cadell, responded that the DLSE had addressed the question of expenses incurred under section 2802 in numerous opinion letters over the years and had historically taken the position that the IRS rate regarding the cost of operating an automobile is presumptively reasonable. Thus, under the DLSE interpretation, an employer who chooses to pay less than the IRS rate and claims that the IRS rate is too high carries the burden of showing what the reasonable rate would be under the circumstances; absent such a showing, the IRS rate is considered reasonable reimbursement.

Regarding the tax benefit question, the letter stated:

> "Given the clear mandate of Section 2804,[3] an agreement which purports to relieve the employer of the obligation to pay the reasonable costs incurred in the operation of an automobile by pointing out to the employee that a tax benefit may be realized by claiming the un-reimbursed expenses as a deduction, would obviously not be effective. To quote the California Supreme Court when reviewing a similarly vacuous proposal: '[T]he mere recitation of the logical consequences of the employers' argument, of course, signals the extreme tenuousness of the employers' contention.' *IWC v. Superior Court* (1980) 27 Cal.3d 690, 726."

Section 2802, subdivision (a) provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties …."

3 Section 2804 provides: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

On February 25, 2003, appellant filed a petition for writ of administrative mandamus. His petition argued that NCC had violated section 2804 and the minimum wage laws. He attached as an exhibit the October 18 DLSE opinion letter. NCC did not respond to the petition.

On May 7, 2003, the trial court heard argument. The court stated it had reviewed all the documents before the Board and the ALJ and the transcript of the ALJ hearing. The court concluded that the DLSE letter was not part of the record because it was not considered below. The court stated that the letter had no authority but was "simply an in-house attorney's position on something." Furthermore, the court believed the letter, if read properly, did not really address the issue; the evidence did not support the letter's contents. The court concluded it would consider the letter only as the opinion of an attorney.

The court then asked appellant if NCC had agreed to pay him 34 cents per mile. Appellant responded that NCC had chosen to pay its drivers by the mile and therefore was required by section 2802 to reimburse them for all reasonable work expenses. The court opined that section 2802 "is really an indemnification section."

This discussion followed:

> "THE COURT: … If you read that letter from that [DLSE] attorney, whatever that letter's worth, the letter takes the position as though there's an agreement between the parties for 34 cents per mile…. [NCC] said we never had an agreement for 34 cents a mile. I just want to know if I missed something. Was there anything between the parties where we would agree to reimburse you for 34 cents per mile? I didn't see it.
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> "[APPELLANT]: Judge, that's why I think the letter is so important, because [NCC does] have an obligation to reimburse all the necessarily incurred expenses. Now, what's necessarily incurred expense with regard to an automobile? … [T]hat's been interpreted by the Labor Department or Division of Labor Standards as being … the IRS mileage rate, which happened to be 34 cents in 2001 …. So [NCC has] selected the method. You look to the Code, the IRS Code to determine what is the rate

of return, and [it] happens that that per-mile basis is [34] cents, and then you look to what they paid.

"Now, the Division of Labor's position I think that letter says a reasonable cost must be paid….

"THE COURT: That might help if you didn't have an agreement, but you have an agreement.

"[APPELLANT]: But the code under [section] 2804 makes it clear that, even if there was an agreement to make it less than the reasonable amount, it wouldn't have any effect. It's void.

"THE COURT: Labor Code [sections] 2802 and 2804 [do not] say that. That section doesn't say anything about when you have an agreement between the two parties. The problem that you have with yours [is] that you have an agreement for 19 cents per mile. That's what you have. Is there anything in the law that says that's invalid, that you can't reimburse somebody 19 cents per mile for mileage? That's what you need to show me.

"[APPELLANT]: Like I say, Judge, if there were no agreement at all, what would be the reasonable amount? It would be the actual costs of operating a vehicle. I can't show that because they don't accept it that way. They want to do it per-mile basis. It seems ridiculous to me that they could say we're going to pay you a nickel per mile when everybody accepts the reasonable amount is what the IRS attaches to it. [¶] … [¶]

"THE COURT: No, listen. You're … mixing up … what the IRS does. The IRS sets a rate for reasonable compensation for use of a person's vehicle in the use of their business for reimbursement. That's all the IRS does. The IRS does not get into a contractual argument as to whether it should be 34 cents or 19 cents. The reason the IRS has done that, the IRS has done that because they're saying this is what we're going to use and we're not going to litigate every case whether some guy should have 56 cents a mile or 22 cents; tax purposes, 34 cents.

"Division of Labor Statistics says that's a good idea. We like that. We're going to adopt that standard as well. So they're saying they adopt the standard. [¶] That's what you've got. You've got a standard for use. Now, how does that equate to [an] oral or … written agreement, [to] do something differently? Does that make it unlawful?

"[APPELLANT]: I think [section] 2804 makes it unlawful, because 2804 says any agreement to the contrary will not have any effect.

"THE COURT: Okay. What does [section] 2802 say?

"[APPELLANT]: [Section] 2802 says that all reasonably incurred costs must be reimbursed.

"THE COURT: [Section] 2802, they talk about reasonable expenditures or losses, they're really talking about an Indemnification case. [Section] 2802 is used in the Labor Code when you've got something and you're trying to get somebody to reimburse you for attorney's fees for expenses. It's a responde[at]/superior position….

"So the situation is you have to come back, you have to show me somewhere in that agreement, for whatever the hourly wage is, reimbursement of 19 cents a mile is a violation of the law. ... You have an excellent analogy to make it why it is. Buy where[does] it say it's a violation of the law? I don't think you can find that. I couldn't find it. See what I'm saying? I think you understand the position that I'm coming from.

"[APPELLANT]: I just feel it's encompassed in [section] 2802 when they say, 'All necessarily incurred expenses must be reimbursed.' That's why.

"THE COURT: Now, is there anything else we need to add to this?

"… This is basically an independent judgment type of situation because we have a fundamental right. We have your right to employment entitlements, and we have the right of the employer not to have to pay it. So I intend to do this as an independent judgment, not based simply on what the ALJ … decided, but I have to give deference to their opinions; and you may want to comment on the fact that it sounds like, when you read through [the ALJ's] opinion, I think you argued this, but your position as well is [the ALJ] was really making this decision [on] what was going on in the marital situation more so than wages.

"[APPELLANT]: Right. I would … just say that there's an argument for good cause exist[ing] with regard to what we were just discussing, and that should be the focus of it. What happened afterward, what happened after the Friday that I decided I need to quit this job is to me of no importance.

"THE COURT: As far as I was concerned, I don't really care what was going on after you decided to leave and when you came back and got back together [with your wife]. [¶] … [¶] … That really doesn't have a whole lot of relevance to these issues.

"[APPELLANT]: I agree."

The court then stated its conclusions as follows:

"As I've indicated before, I think [appellant] did an excellent job of setting forth his position, but in order for a Labor Code Section 2802 to apply or any other code section, there has to be some type of showing that the underlying agreement violates the law. The wages are set. They're set at the hourly minimum at the time, and there's a reimbursement for 19 cents. Nineteen cents per mile or 34 cents per mile could be expense of employment. There's no question about that. But I have not been able to find any case law that says that failure to reimburse at 34 cents a mile is violative of any type of Labor Code or anything else. The argument can be made, he did an excellent analysis …. [¶] There's a very good argument, but the agreement itself, there's nothing about the agreement that this Court can find that violates the law. The law requires minimum wage. The law allows people to negotiate above minimum wage if they wish to do so, and the law says that you're supposed to honor contracts. If you enter into a contract to provide something, and the expenses of reimburse -- the expenses are simply that. They're reimbursement.

"The mileage is not wages. I do not find that to be wages. If the ALJ … kind of lumped that in there, I don't find that to be the situation. That may help you if you wish to proceed with this matter later, but the Court's going to find based upon its independent review of the record, independent judgment that the decisions of the ALJ and the Appellate Board will be affirmed."

DISCUSSION

Appellant contends the trial court erred by interpreting sections 2802 and 2804 as applying only to the indemnification of work-related legal expenses and by finding the statutes inapplicable in this case. He also complains about NCC's failure to reimburse him for work expenses because NCC used a 19-cent reimbursement rate rather than the

IRS 34-cent rate. In addition, he contends the trial court misinterpreted the DLSE opinion letter he attached to his writ petition.[4] Finally, he maintains NCC's inadequate compensation resulted in a violation of the minimum wage laws because he was forced to pay work expenses from his income.

I. PROCEDURE AND STANDARDS OF REVIEW

In order to receive unemployment insurance benefits, a claimant must apply to the EDD, a branch of the Health and Welfare Agency, which investigates the claim and makes an initial eligibility determination in a nonadversarial setting. (Unemp. Ins. Code, §§ 301, 1326 et seq.) The claimant has the burden of establishing eligibility and, as a practical matter, the EDD's initial inquiry "is limited by the necessity for routine, ex parte determinations based upon such information as is reasonably available." (*Jacobs v. California Unemployment Ins. Appeals Bd.* (1972) 25 Cal.App.3d 1035, 1040, fn. 7; *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1024.)

If the EDD denies the application for benefits, the claimant may file an administrative appeal, which is heard by an ALJ. (Unemp. Ins. Code, §§ 1334, 1335, subd. (c); Cal. Code Regs., tit. 22, § 5100 et seq.) ALJ's, acting on behalf of the Board, sit by authority granted under Unemployment Insurance Code section 100 et seq., and are limited to reviewing the action of the EDD in its ministerial determination of unemployment benefit eligibility (Unemp. Ins. Code, § 1334). (*American Federation of Labor v. Unemployment Ins. Appeals Bd., supra,* 13 Cal.4th at pp. 1021-1022.) Section 1334 of the Unemployment Insurance Code states that "[a]n [ALJ] after affording a reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm, reverse, modify, or set aside any determination" of eligibility.

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[4] The trial court does seem to have misinterpreted the letter.

"Not until the appeal to the referee [here, the ALJ] and the ensuing appeal to the [Board] does allocation of the burden of proof become meaningful. (See Unemp. Ins. Code, §§ 1327, 1328, 1334.) At the appellate level the agency has the task of formulating findings which support its decision." (*Jacobs v. California Unemployment Ins. Appeals Bd., supra,* 25 Cal.App.3d at p. 1040, fn. 7; *American Federation of Labor v. Unemployment Ins. Appeals Bd., supra,* 13 Cal.4th at p. 1024.)

If the ALJ denies eligibility, the claimant may appeal to the Board, which may take additional evidence. (*American Federation of Labor v. Unemployment Ins. Appeals Bd., supra,* 13 Cal.4th at p. 1025.)

If the Board affirms the ALJ's denial of eligibility, the claimant may then seek a limited trial de novo in the superior court in an administrative mandate proceeding. (Code Civ. Proc., § 1094.5 [review of administrative orders].) During this review, a claimant is not limited to the record before the Board, and the trial court exercises its independent judgment on all the facts material to the claim, regardless of the record of proceedings before the Board, and decides whether the administrative agency's findings are supported by the weight of the evidence. (*American Federation of Labor v. Unemployment Ins. Appeals Bd., supra,* 13 Cal.4th at p. 1026; *Thomas v. California Emp. Stab. Com.* (1952) 39 Cal.2d 501, 504 [trial court exercises its independent judgment on the evidentiary record of the administrative proceedings before the Board].) "[B]ecause the entire judicial power of the state is vested in certain enumerated courts by article III, section 1, and article VI, section 1, of the Constitution of this state," only a court, in contrast to the Board, has constitutional authority to make final determinations of fact, and indeed must exercise independent judgment on all material facts presented by the claimant. (*Laisne v. Cal. St. Bd. of Optometry* (1942) 19 Cal.2d 831, 834; *American Federation of Labor v. Unemployment Ins. Appeals Bd., supra,* 13 Cal.4th at pp. 1026-1027.)

If the trial court denies the claimant's petition for writ of administrative mandamus, thereby affirming the Board's denial of eligibility, the claimant may then seek review from the Court of Appeal. (Code Civ. Proc., § 904.1, subd. (a)(1) [judgment of a superior court denying a writ of mandate is reviewable by Court by Appeal]; *Kennedy v. South Coast Regional Com.* (1977) 68 Cal.App.3d 660, 666.) On appeal, the inquiry is limited to whether the trial court's findings are supported by substantial evidence. (*Metric Man, Inc. v. Unemployment Ins. Appeals Bd*. (1997) 59 Cal.App.4th 1041, 1045; *Lacy v. California Unemployment Ins. Appeals Bd.* (1971) 17 Cal.App.3d 1128, 1134.) We resolve all conflicts in the evidence in favor of the trial court's findings and draw all legitimate and reasonable inferences to uphold those findings. (*Lacy v. California Unemployment Ins. Appeals Bd., supra,* at p. 1134.) "When, however, the facts before the administrative agency are uncontroverted, the trial court's determination involves only a question of law. Appellate review in such a case is based not upon the substantial evidence rule, but upon the independent judgment rule. [Citations.]" (*Pacific Maritime Assn. v. Unemployment Ins. Appeals Bd.* (1985) 169 Cal.App.3d 568, 574; *Agnone v. Hansen* (1974) 41 Cal.App.3d 524, 527 [independent review when probative facts are uncontradicted, not susceptible of opposing inferences, and, as a matter of law, compel a different conclusion from that reached by trial court].) Thus, "[t]he appellate court's review of the superior court judge's gleanings from the administrative transcript is just as circumscribed as its review of a jury verdict or judge-made finding after a conventional trial." (*Lacy v. California Unemployment Ins. Appeals Bd., supra,* at p. 1134.)

II. GOOD CAUSE TO LEAVE WORK

Under Unemployment Insurance Code section 1256, a claimant does not qualify for unemployment benefits if "he or she left his or her most recent work voluntarily without good cause …." "In determining what constitutes good cause it is essential to examine the purposes of the unemployment insurance law and the definition of that term

as developed in the case law. 'The basic purpose of the law is to insure a diligent worker against the vicissitudes of enforced unemployment not voluntarily created without good cause.' [Citation.]" (*Rabago v. Unemployment Ins. Appeals Bd.* (1978) 84 Cal.App.3d. 200, 208-209.) The provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objective of reducing the hardship of unemployment. (*Gibson v. Unemployment Ins. Appeals Bd.* (1973) 9 Cal.3d 494, 499.) "'"Good cause" cannot be determined in the abstract any more than can any other legal conclusion. It can be determined only in relation to a set of facts. [Citation.] It has been held that the Legislature intended by the phrase 'good cause' to include some causes which are personal and that it need not necessarily arise out of or be attributable to the employment itself. [Citation.] [¶] … "Good cause" must be so interpreted that the fundamental purpose of the legislation shall not be destroyed." [Citation.]'" (*Rabago v. Unemployment Ins. Appeals Bd., supra,* 84 Cal.App.3d at pp. 208-209.)

The term "good cause" as used in the statute means an adequate cause, a cause that comports with the purposes of the Unemployment Insurance Code and with other laws. (*Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 5.) "'[I]n view of the statutory objectives ... the concept of "good cause" cannot be arbitrarily limited; the board must take account of "real circumstances, substantial reasons, objective conditions, palpable forces that operate to produce correlative results, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith."' [Citation.]" (*Sanchez v. Unemployment Ins. Appeals Bd.* (1984) 36 Cal.3d 575, 584.) "Accordingly '"'[G]ood cause,' ... means such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed; the quitting must be for such a cause as would reasonably motivate in a similar situation the average able-bodied and qualified worker to give up his or her employment with its

certain wage rewards in order to enter the ranks of the compensated unemployed."' [Citation.]" (*Id.* at pp. 584-585.)[5]

Section 1256 expressly establishes a presumption that the employee did not leave work without good cause. (§ 1256; *Perales v. Department of Human Resources Dev.* (1973) 32 Cal.App.3d 332, 340.) That presumption, however, may be rebutted by facts disclosed by the claimant in his or her application or in other documents signed by the applicant when making a claim for benefits or during interviews with department personnel, or disclosed after independent investigation by the department, or disclosed by the employer pursuant to sections 1327 and 1328. (*Perales v. Department of Human Resources Dev., supra,* at p. 340.) "Because the presumption is established to implement the public policy of prompt payment of benefits to the unemployed so as to reduce the suffering caused thereby [citation], we conclude that the presumption affects the burden of proof. [Citation.] It imposes upon the parties against whom it operates, the employer and the department, the burden of proving the nonexistence of the presumed fact [citation]. This means that to overcome the presumption the employer or the department must prove *by a preponderance of the evidence* that the claimant quit without probable cause …. [Citations.]" (*Id.* at pp. 340-341.)

"[T]he determination whether an applicant for unemployment insurance had 'good cause' to leave employment is an issue of law. [Citation.] And … where the probative facts are not in dispute, and those facts clearly require a conclusion different from that

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5 In finding that appellant did not have good cause to leave his work with NCC, the ALJ relied on *Hildebrand v. Unemployment Ins. Appeals Bd., supra,* 19 Cal.3d 765. In *Hildebrand*, the employee quit because she was dissatisfied with her work hours. She was denied benefits because she was aware of the work conditions at the time she was hired. By contrast in the present case, although appellant knew the conditions of his work at the time he was hired, he contends the conditions turned out to be illegal because the actual costs of performing the work exceeded the reimbursement he was paid.

reached by the trial court, the latter's conclusions may be disregarded." (*Sanchez v. Unemployment Ins. Appeals Bd., supra,* 36 Cal.3d at p. 585.)

III. SECTION 2802

Appellant contends NCC violated section 2802 by failing to reimburse him for his necessarily incurred work expenses and, as a result, violated state and federal minimum wage requirements. These violations, he argues, constituted good cause for him to quit his job.[6]

Section 2802, subdivision (a) provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties …." This requirement cannot be waived by an agreement with the employee. (§ 2804.) Section 2802 ensures that duty-related expenses and losses ultimately fall on the business enterprise, not on the individual employee. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 74, fn. 24; *Grissom v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 60 [obvious purpose of § 2802 is to protect employees from suffering expenses in direct consequence of doing their jobs].)

In this case, the trial court determined that section 2802 applied only to *legal* expenses incurred by an employee and thus was of no application to appellant's situation.[7] Although it is true that section 2802 has frequently been applied to the

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[6] "Good cause" to leave work can exist when an employer imposes rules or conditions on its employees that are unreasonable or illegal (see, e.g., Cal. Code of Reg., tit. 22, § 1256-23, subd. (d) [Voluntary Leaving -- Good Cause -- Working Conditions]) or when an employer fails to pay the minimum wages required by law (see, e.g., Cal. Code of Reg., tit. 22, § 1256-22, subd. (b)(1) [Voluntary Leaving -- Good Cause -- Wages].)

[7] The principle that the trial court's opinions are irrelevant (see *Metric Man, Inc. v. Unemployment Ins. Appeals Bd.* (1997) 59 Cal.App.4th 1041, 1046) does not apply here because the trial court's remarks disclose that the court made a material error of law --

indemnification of an employee's work-related legal expenses, there is nothing in the language of the section or in the interpretive materials that prevents its application to any other necessary work expenses incurred by an employee. The plain language of section 2802 does not limit the employer's obligation to specific types of expenses but expressly encompasses *all necessary* work expenses. Furthermore, the statute's use of the term "indemnification" does not limit its application to particular kinds of loss. As appellant notes, the meaning of "indemnification" includes *reimbursement* after a loss. (See *Grissom v. Vons Companies, Inc., supra,* 1 Cal.App.4th at pp. 57-58 [parenthetically defining indemnification as reimbursement, citing Black's Law Dictionary]; Black's Law Dictionary at p. 769 (8th Ed. 2004).)

Significantly, the Department of Labor Standards Enforcement (DLSE) has interpreted section 2802 as applying broadly.[8] The DSLE states, in its Enforcement

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whether section 2802 applied -- that rationally could have impacted the outcome of the case. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 345, p. 390 [trial court's opinion may be relied upon to reverse where the opinion discloses that the court made a material error of law]; *People v. Butcher* (1986) 185 Cal.App.3d 929, 936-937 [opinion disclosed that trial court erroneously interpreted a statute].)

[8] Interpretive opinion/advice letters and bulletins from an administrative agency can be persuasive; they are a form of authority for the court's consideration. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 590 [reference to DLSE advise letters]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 21 (conc. opn. of Mosk, J.) [administrative interpretation embodied in opinion letter is persuasive]; *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1995) 37 Cal.App.4th 675, 683 [we adhere to the well-established principle that contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; courts will not depart from such construction unless it is clearly erroneous or unauthorized].) The Supreme Court stated in *Yamaha*: "'Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous.' [Citation.] This principle has been affirmed on numerous occasions by [the Supreme Court] and the Courts of Appeal. [Citations.] Moreover, this principle applies

Policies and Interpretations Manual (available at http://www.dir.ca.gov/dlse/Manual-Instructions.htm), that section 2802 covers a multitude of situations. (DLSE Man. 29.2.3.1.) The most common issues arising within the employment context are situations in which the employer requires, as a condition of employment, that the employee furnish tools or equipment or underwrite costs so that the employee can discharge his or her duties. (*Id.* at 29.2.3.) The manual gives the example of an employer requiring an employee to open a bank account in order to receive payment by direct deposit. The employer must pay any cost involved in opening the account. Similarly, the employer must pay the cost of insurance required by the employer. (*Id.* at 29.2.3.2.) In addition, DLSE opinion letters (available at http://www.dir.ca.gov/dlse/DLSE_OpinionLetters.htm) express the DLSE's interpretation of section 2802's broad application. (See, e.g., DLSE Opinion Letter 1998.11.05 [§ 2802 applies to mileage and insurance on employee's car used for business purpose]; DLSE Opinion Letter 1993.02.22 [same]; DLSE Opinion Letter 2001.03.19 [§ 2802 applies to meals if employee is required to entertain employer's customers at a restaurant or if employee is required to attend work-related meeting in a restaurant during service of meal or drinks].)

The trial court at several junctures during the hearing on appellant's petition commented in essence that appellant had agreed to the 19-cent figure and that the court could not find any law that made illegal such an agreement about a term of employment. For the trial court's reference on remand, we simply note that, as we said, section 2804

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to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. [Citation.]" (*Yamaha, supra,* 19 Cal.4th at p. 21.) "[C]ourts often recognize the propriety of assigning great weight to administrative interpretations of law either by reference to an explicit or implicit delegation of power by the Legislature to an administrative agency [citations], or by noting the agency's specialization and expertise in interpreting the statutes it is charged with administering [citations]." (*Id.* at p. 22.)

makes illegal any "contract or agreement, express or implied," between an employee and an employer that is inconsistent with section 2802. We distinguish this situation, where the law invalidates certain contractual terms even though consented to by the employee, from the situation in *Hildebrand v. Unemployment Ins. Appeals Bd, supra,* 19 Cal.3d 765, where the employee's dissatisfaction was with her work hours, to which she had agreed when she took the job, and where there was no indication the hours were illegal by virtue of some specific provision of law. Rather, the conflict in *Hildebrand* was between the employment agreement and the employee's beliefs and not, as here, between the employment agreement and state law.

For these reasons, we think section 2802 applies to appellant's situation. There can be no plainer example of necessarily incurred work expenses than those associated with NCC's requirement that appellant supply, use, and maintain his own vehicle to drive 1,000 miles per week on NCC's business. Section 2802, by its plain language, mandated that NCC reimburse appellant for all such expenses incurred by appellant in carrying out his duties on behalf of NCC.[9]

However, the questions of whether NCC violated section 2802 (that is, whether NCC's 19-cent reimbursement rate was inadequate to reimburse appellant for his

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9 We agree with appellant that the failure to adequately reimburse the work expenses of a minimum-wage employee can result in the failure to pay that employee the minimum wage. When an employee is forced to pay his employer's work expenses from his own pocket, his income is reduced below that which the law allows. (See, e.g., *Arriaga v. Florida Pacific Farms, L.L.C.* (11th Cir. 2002) 305 F.3d 1228 [there is no legal difference between deducting a cost directly from the worker's wages and shifting a cost for the employee to bear; employer may not deduct from employee wages the cost of facilities which primarily benefit the employer if such deductions drive wages below the minimum wage; this rule cannot be avoided by simply requiring employees to make such purchases on their own, either in advance of or during the employment].) Although appellant addressed this issue in his writ, the trial court did not reach it, presumably because it found section 2802 inapplicable.

necessary work expenses), whether appellant left work because of any such violation, and, if so, whether appellant left work for good cause under Unemployment Insurance Code section 1256, are factual questions subject to the trial court's independent judgment, which, because the trial court believed section 2802 did not apply, were not addressed by that court.[10] We are not in a position to decide any of these factual questions on this appeal. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 792, pp. 824-825 [appellate court's fact-finding power limited and should not be employed where judgment is reversed and there may be evidence supporting the case made by respondent]; § 796, p. 829.) We will therefore reverse and remand to the trial court for further proceedings.

Respondent's only contention on this appeal is that the trial court's decision was supported by substantial evidence. Whether or not that is so, the fact remains that the trial court's error of law removed from the decisional equation a legitimate alternative factual scenario that could have been found to support appellant's claims for benefits had the trial court considered it. Because appellant was entitled to have the court evaluate this alternate theory, the trial court's reliance upon a theory that may have been warranted by the evidence is immaterial. (See *Smith v. Fetterhoff* (1956) 140 Cal.App.2d 471, 473 [where trial court refused to consider and weigh evidence upon the erroneous belief that it could not be considered, appellate court was not justified in affirming judgment upon ground that evidence supported judgment]; *Lippold v. Hart* (1969) 274 Cal.App.2d 24, 26

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10 We note that, as appellant points out, the DLSE has consistently taken the position that the IRS mileage rate is a presumptively reasonable reimbursement rate and, if an employer wants to pay its employees a lower rate of reimbursement for mileage, the employer must show that the lower rate is reasonable under the particular circumstances. (See, e.g., DLSE Opinion Letters 1998.11.05 & 1994.08.14.) The opinion letter solicited by appellant reiterates this position. (For reasons not known to us, that opinion letter is not available on the DLSE website.)

[where comments of trial judge indicate that he or she misconceived his or her duty, an appellate court will not blindly affirm the judgment below because there is some evidence to support it].) The situation is no different than one where a court's error of law deprived the plaintiff of a verdict on one of a number of separate causes of action.

DISPOSITION

The judgment is reversed. Appellant shall recover his costs on appeal.

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Dibiaso, Acting P.J.

WE CONCUR:

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Vartabedian, J.

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Buckley, J.